



State of Idaho

DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

September 17, 2002

Lee Peterson
Watermaster
Water District No. 37 & No. 37M
P. O. Box T
Shoshone, ID 83352

Re: Silver Creek Dike Maintenance and Related Work in Rivers or Streams

Dear Lee:

I have reviewed various items of correspondence pertaining to dike maintenance that you were involved in performing this past June. As watermaster, your official duties are limited to distributing water, under my supervision, among water rights pursuant to Idaho Code §§ 42-602, 42-606, 42-607, and 42-801, including accounting for such distribution, and to acquiring, holding, and disposing of real and personal property, equipment and facilities in the name of the water district, as authorized by the water right holders in the district, pursuant to Idaho Code § 42-605(12).

Under the provisions of state law, neither you in your official capacity as watermaster nor the water district as a subdivision of the State of Idaho, has ever been authorized to repair or maintain stream channels, diversion structures, or conveyance facilities. The water right holders in the water district are solely responsible to undertake whatever work is needed to provide for the delivery of water to, through, and down their diversion facilities. While an easement can clearly be held by the water district under Idaho Code § 42-605(12), it is the responsibility of the water right holders themselves, not the watermaster or the water district, to secure needed permits or authorizations and perform work required to repair or maintain stream channels, diversion structures, or conveyance facilities. Obviously, this instruction must be tempered to recognize that your duty as watermaster in distributing water includes actions to open and close headgates, raise and lower check dams, and if the diversion does not have such permanent facilities, to move rocks and other materials at the diversion to change the flow through a diversion.

To the extent that you choose to act as an agent for the water right holders in the water district and perform work required to repair or maintain stream channels, diversion structures, or conveyance facilities, you are acting outside of your duties as watermaster and your actions are not considered part of your job as a quasi-employee of the State of Idaho. It is important that if

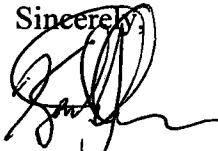
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you are involved in performing such tasks, you prevent any preception that your involvement is related to your duties as watermaster and that by reason of your official position an activity can be pursued without concern for trespass on private property or without obtaining needed regulatory approvals.

Apparently, there has been some uncertainty regarding the scope of your duties as water master. Enclosed is a copy of a letter from Craig Hobdey inquiring about permitting requirements for maintenance of stream channels for the purpose of delivering water rights and a copy of a response to that letter from Norm Young. Norm's letter includes specific references to your responsibilities and authorities in this regard because Mr. Hobdey had specifically inquired about the scope of your duties as watermaster.

Lee, if you have questions on this issue or would like the Department's evaluation of whether a specific activity is within the watermaster's scope of duties, please contact Tim Luke, Allen Merritt, or Norm Young.

Sincerely,



Karl J. Dreher
Director

Enclosures (2)

Copy of letter from Craig Hobdey dated September 4, 2002

Copy of letter from Norm Young dated September 6, 2002

copies w/o enclosures to: Tim Luke, IDWR ✓
Allen Merritt, IDWR – Twin Falls
Clive Strong, Attorney General's Office